Nos. 79-1943, 80-193

In the Supreme Court of the United States

OCTOBER TERM, 1980

JOSEPH ALESSI, ET AL., APPELLANTS

v.

RAYBESTOS-MANHATTAN, INC.

HENRY BUCZYNSKI, ET AL., PETITIONERS

v.

THE GENERAL MOTORS CORPORATION

ON APPEAL FROM THE JUDGMENT OF AND ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTIONS PRESENTED

1. Whether the Treasury Regulations reasonably interpret the Employee Retirement Income Security

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[1] The additional parties in *Alessi* (No. 79-1943) are set forth at pages i-ii of the brief for the appellants in that case.

[2] The additional parties in *Buczynski* (No. 80-193) are set forth at page ii of the brief for the petitioners in that case.

Act of 1974 to provide that the reduction of an employee's pension benefit by an amount equal to a workers' compensation award is not a prohibited forfeiture under Section 203(a) of the Act.

2. Assuming that Section 203(a) of ERISA does not prohibit offsets of worker's compensation awards against pension benefits, whether the express prohibition against such offsets by Section 34:15-29 of the New Jersey Workers' Compensation Act is preempted by Section 514 of ERISA (29 U.S.C. 1144 (a)), which directs that the federal statute "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan * * *."

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	7
Argument:	
I. The Treasury Regulations reasonably interpret ERISA to provide that a reduction of an employee's pension benefits by the amount of a workers' compensation award is not a prohibited forfeiture under Section 203(a) of the Act	10
A. Section 203(a)(3) of ERISA does not bar offsets for workers' compensation	12
B. The court of appeals correctly upheld the Treasury Regulation permitting offsets of workers' compensation awards as a reasonable interpretation of the statute that reflects the longstanding practice of integrating such benefits in retirement systems	16
II. Section 514(a) of ERISA preempts New Jersey law insofar as its application would prohibit offsets of workers' compensation awards against pension benefits	23
Conclusion	27

TABLE OF AUTHORITIES

Cases:

Azzaro v. *Harnett*, 414 F. Supp. 473, aff'd, 553 F.2d 93, cert. denied, 434 U.S. 824	26
Bingler v. *Johnson*, 394 U.S. 741	19
Commissioner v. *South Texas Co.*, 333 U.S. 496	19
Fulman v. *United States*, 434 U.S. 528	9, 19
Hewlett-Packard Co. v. *Barnes*, 425 F. Supp. 1294, aff'd, per curiam, 571 F.2d 502, cert. denied, 439 U.S. 831	26, 27

Cases—Continued Page

Nachman Corp. v. *Pension Benefit Guar. Corp.*, 446 U.S. 359 12
National Carriers Conf. Committee v. *Heffernan*, 454 F. Supp. 914 26
National Muffler Dealers Ass'n v. *United States*, 440 U.S. 472 20
United States v. *Correll*, 389 U.S. 299 19
Utility Workers Union v. *Consumers Power Co.*, No. 78-1402 (6th Cir. Jan. 6, 1981) 11, 23
Wadsworth v. *Whaland*, 562 F.2d 70, cert. denied, 435 U.S. 980 26

Statutes and regulations:

Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* 2
Section 2, 29 U.S.C. 1001 24
Sections 2-514, 29 U.S.C. 1001-1144 12
Section 2(a), 29 U.S.C. 1001(a) 12
Section 3(19), 29 U.S.C. 1002(19) 13
Section 102(e), 29 U.S.C. 1023(e) 14
Section 203, 29 U.S.C. 1053 ..... 10, 19, 20
Section 203(a), 29 U.S.C. 1053(a) 6, 7, 8, 10, 12, 13, 14, 18
Section 203(a)(3), 29 U.S.C. 1053(a)(3) 4, 5, 13, 15
Section 203(a)(3)(A), 29 U.S.C. 1053(a)(3)(A) 13
Section 203(a)(3)(B), 29 U.S.C. 1053(a)(3)(B) 13
Section 203(a)(3)(C), 29 U.S.C. 1053(a)(3)(C) 13
Section 203(a)(3)(D), 29 U.S.C. 1053(a)(3)(D) 13
Section 206(b), 29 U.S.C. 1056(b) 14, 17
Section 514, 29 U.S.C. 1144 23
Section 514(a), 29 U.S.C. 1144(a) 6, 9, 11, 12, 23, 27
Sections 3001-3041, 29 U.S.C. 1201-1241 1

Cases—Continued Page

Internal Revenue Code of 1954 (26 U.S.C.):

Section 385(a) 19
Section 401(a) 1, 14, 19
Section 401(a)(4) 20
Section 401(a)(5) 14, 18, 20, 21
Section 411 ..... 7, 18, 19, 20
Section 401(a)(15) 6, 14, 15
Section 501(a) 1
Section 1502 19
Section 7805(a) 9, 20

Social Security Act, 42 U.S.C. 301 *et seq.*:

42 U.S.C. 424a 17
45 U.S.C. 231a(a)(1)(iv)(v) 17

New Jersey Workers' Compensation Act, N.J. Stat. Ann. § 34:15-29 (West Supp. 1979) 3, 4, 6, 23

Treas. Regs. on Income Tax (26 C.F.R.):

Section 1.401-4(b) 14
Section 1.411(a)-4(a) 1, 5, 7, 10, 11, 18, 20, 23

Miscellaneous:

120 Cong. Rec. (1974)

p. 29197 25
p. 29933 25
p. 29942 24

H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 1944 21
H.R. Rep. No. 93-807, 93d Cong., 2d Sess. (1974) .. 6, 15
IRS Pub. No. 778 (2-72), *Guides for Qualification of Pension, Profit-Sharing, and Stock Bonus Plans* (1972) 21
Rev. Rul. 68-243, 1968-1 Cum. Bull. 157 ..... 6, 21
Rev. Rul. 69-421, part 4(j)(4), 1969-2 Cum. Bull. 61 21
Rev. Rul. 78-178, 1978-1 Cum. Bull. 117 ..... 21, 22
Larson, Workmen's Compensation Law (1979 ed.):

Vol. 1A 22
Vol. 2 22
Vol. 4 22

INTEREST OF THE UNITED STATES

The United States has substantial enforcement responsibilities with respect to the Employee Retirement Income Security Act. Pursuant to Sections 401 (a) and 501(a) of the Internal Revenue Code of 1954 (26 U.S.C.), the Secretary of the Treasury (through his delegate the Commissioner of Internal Revenue) is authorized to issue advance determinations as to whether a pension plan meets the requirements for exempt status, deferral of tax until receipt of benefits, and deductibility of contributions. Moreover, under Sections 3001-3041 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1201-1241), the Secretary of the Treasury and the Secretary of Labor have joint responsibilities for monitoring the activities of pension plans and the enforcement of the standards relating to participation, vesting, and funding.

Finally, the Secretary of the Treasury has issued a Regulation (Treasury Regulations on Income Tax, Section 1.411(a)-4(a) (26 C.F.R.)) that squarely supports the decision below. That Regulation provides that nonforfeitable rights are not considered to be forfeitable because they may be reduced to take into account benefits payable under the Social Security Act or under any other federal or state law and which are taken into account in determining plan benefits. The Regulation reflects the longstanding policy of the Commissioner of Internal Revenue to qualify pension plans which, like those involved in the instant cases, provide for offsets for workers' compensation benefits. This policy antedated the enactment of ERISA in 1974 and has remained unchanged after the passage of that federal stat-

ute. In light of the Commissioner's position, which finds expression in several published rulings both before and after the enactment of ERISA, we are advised by the Internal Revenue Service that there are thousands of pension plans that contain such offset provisions that have been approved by the Internal Revenue Service. Collective bargaining and funding of pensions has therefore proceeded upon the assumption of both management and labor that such offset provisions are permissible. Because this Treasury Regulation governs the first question presented, the government participated as amicus curiae in the court of appeals in support of the employers. Hence, the United States has a direct interest in this litigation.

STATEMENT

These cases, which were consolidated for argument in the court of appeals, arise on virtually identical facts.

General Motors Corporation and Raybestos-Manhattan, Inc. maintain pension plans for their employees that are covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (ERISA). Both pension plans provide that retirement income benefits shall be reduced to the extent a recipient is eligible to receive payments under a workers' compensation law or similar statute, when such workers' compensation payments are distributed concurrently with the retirement income (J.A. 93a-94a).[3]

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[3] Unless otherwise indicated, "J.A." references are to the joint appendix in No. 80-193 (*Buczynski*).

The General Motors offset clause provides:

Section 2. Deductions for Workers' Compensation

In determining the monthly benefits payable under this Plan, a deduction shall be made unless prohibited by law,

In 1977, New Jersey enacted a statute expressly prohibiting such offset provisions. The statute, which became effective on July 14, 1977, added the following italized sentence to Section 34:15-29 of the New Jersey Workers' Compensation Act, N.J. Stat. Ann. (West Supp. 1979). The complete section now provides:

> The right of compensation granted by this chapter shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid

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equivalent to all or any part of Workmen's Compensation (including compromise or redemption settlements) payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be enacted, provided that such deductions shall be to the extent that such Workmen's Compensation has been provided by premiums, taxes or other payments paid by or at the expense of the Corporation, except that no deduction shall be made for the following:

(a) Workmen's Compensation payments specifically allocated for hospitalization or medical expense, fixed statutory payments for the loss of any bodily member, or 100% loss of use of any bodily member, or payments for loss of industrial vision.

(b) Compromise or redemption settlements payable prior to the date monthly pension benefits first become payable.

(c) Workmen's Compensation payments paid under a claim filed not later than two years after the breaking of seniority.

The Raybestos offset clause provides:

All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income.

> wages for labor. Claims or payments due under this chapter shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment. *The right of compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments.*

Shortly after New Jersey enacted the addition to Section 34:15-29, petitioners in No. 80-193 (*Buczynski*) and appellants in No. 79-1943 (*Alessi*) brought suits against General Motors and Raybestos respectively in the New Jersey state courts. The named plaintiffs in each suit were former employees of those companies who had recovered workers' compensation awards against the companies and were therefore subject to commensurate reductions in their pension benefits. The suits sought permanent injunctions against the offsets and recoupment damages against offsets that had already been made (J.A. 95a-96a).

2. The companies successfully sought to remove both cases to the United States District Court for the District of New Jersey, where they were assigned to two district judges. In No. 80-193 (*Buczynski*), the district court concluded that where a pension plan makes the employee's right to accrued benefits derived from employer contributions conditional upon a factor other than years of service and age, the plan is unlawful under ERISA, unless the condition is one of those set forth in 29 U.S.C. 1053(a)(3). Under that provision, a pension plan is not deemed to violate the forfeiture restrictions if it provides for forfeitability in the event of death, employment in the same industry covered by the plan, retroactivity of certain plan amendments, or withdrawal by the employee of

amounts attributable to benefits derived from mandatory contributions made by him. Since forfeiture to the extent of receipt of worker's compensation benefits is not one of the exceptions set forth in 29 U.S.C. 1053(a)(3), the district court concluded that the plan violated ERISA (J.A. 63a).

Assuming arguendo that the offset provision in the pension plan did not violate the prohibitions against forfeiture of ERISA, the district court further ruled that such offsets were barred by the New Jersey Workers' Compensation Act and that in enacting ERISA Congress did not intend to preempt the state workers' compensation law (J.A. 67a-69a). In a subsequent opinion issued upon General Motors' motion for reconsideration, the district court addressed the applicability of Treas. Regs., Section 1.411(a)-4(a) (26 C.F.R.), for the first time. It ruled that the Regulation was inconsistent with the forfeiture restrictions of ERISA (J.A. 70a-75a).[4]

3. The court of appeals reversed (J.A. 93a-118a). It held that "[t]he legislative history affirmatively supports the Treasury Regulation, and, at the very least, any conflict between the regulation and the statute, if one indeed exists, is clearly insufficient to mandate invalidation" (J.A. 101a).

In so ruling, the court of appeals rejected the district court's premise that all benefit reductions are forfeitures and all forfeitures are impermissible except for the four exceptions set forth in 29 U.S.C. 1053(a)(3). The court recognized that Congress' approval of the Internal Revenue Service's practice of allowing offsets of Social Security benefits against

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[4] In No. 79-1943 (*Alessi*), the district court likewise ruled for the plaintiff-employees but issued an unpublished letter opinion (J.A. 96a).

pension benefits refuted the district court's reading of the statute. As the court of appeals observed, when ERISA was enacted, the statute and the legislative history show that Congress chose not to bar the Social Security offset entirely but merely to prohibit increases in the amount of the offset based upon increases in the amount of Social Security benefits. See 26 U.S.C. 401(a)(15); H.R. Rep. No. 93-807, 93d Cong., 2d Sess. 29, 68-69 (1974). The court therefore concluded that "Congress's implicit approval of the Social Security offset compels the conclusion that such an offset is *not* a forfeiture. Thus, the very basis on which the district courts found the Treasury Regulation in issue here to conflict with § 1053(a) is in error" (emphasis in original) (J.A. 108a).

The court of appeals held that there was an insufficient basis to strike down the Treasury Regulation in the absence of clear evidence that Congress intended to prohibit offsets for workers' compensation. In support of its conclusion, the court cited a specific Internal Revenue Service ruling approving such offsets (Rev. Rul. 68-243, 1968-1 Cum. Bull. 157), which was republished on three subsequent occasions. Moreover, a review of the legislative history convinced the court that Congress was familiar with the IRS rules on integration of benefits in pension plans when it enacted ERISA and evidenced its intention to preserve them. The court of appeals therefore upheld the validity of the Regulation (J.A. 111a-112a).

Finally, the court of appeals held that ERISA preempts Section 34:15-29 of the New Jersey Workers' Compensation Act, N.J. Stat. Ann. (West Supp. 1979). In addressing the preemption provision of ERISA (29 U.S.C. 1144(a)), the court noted that the

legislative history "make[s] plain that the preemptive intent is just as broad as its language suggests" (J.A. 117a). The court concluded "that the preemption provision is intended to be read in its normal dictionary sense, and that the New Jersey statute prohibiting Workmen's Compensation offsets cannot stand (footnote omitted)" (*ibid.*).

SUMMARY OF ARGUMENT

I.

A. The court of appeals correctly held that the Treasury Regulations reasonably interpret ERISA to provide that a reduction of an employee's pension benefits by the amount of a workers' compensation award is not a prohibited forfeiture under Section 203(a) of the Act.

The Regulation in question—Section 1.411(a)-4(a)—was promulgated under Section 411 of the Internal Revenue Code which corresponds to Section 203 of ERISA. It provides that "* * * nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits * * *" Workers' compensation is clearly encompassed by the terms of the Regulation as it is a benefit "provided under any other * * * State law * * *." Hence, if the Regulation is valid, workers' compensation offsets are not barred by ERISA.

Neither Section 203(a) nor any other provision of ERISA bars such offsets. Section 203(a) announces a fundamental rule of nonforfeiture of pension ben-

efits with a number of exceptions. Petitioners'[5] case rests on the premise that workers' compensation offsets are prohibited because they are not included in the list of permissible forfeitures enumerated in Section 203(a). But petitioners' argument overlooks the other parts of the statute that permit offsets for Social Security benefits except to the extent such benefits are increased after retirement. In enacting these provisions, Congress specifically approved the Internal Revenue Service's administrative practice of approving offsets for Social Security benefits as long as such offsets were fixed at the level of the benefits paid at the commencement of retirement. Thus, the permissible offset for Social Security benefits shows that Congress did not intend to bar offsets for benefits that were traditionally integrable components of retirement plans where such offsets did not work a net reduction in the employee's contemplated retirement income. Here, of course, the offset for workers' compensation does not occasion a loss of any of petitioners' pension rights. Rather, it simply serves to fund their pensions in part from another source during the period in which the workers' compensation award was payable.

B. Given Congress' silence with respect to workers' compensation offsets, it is plain that it left the question of workers' compensation offsets open to administrative resolution. On this clean slate, it was open for the Commissioner to interpret the statute to permit the similar practice of integrating workers' compensation benefits in retirement systems. It is no answer to argue, as petitioners do, that disability benefits such as workers' compensation must be

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[5] For convenience, appellants and petitioners will be referred to collectively herein as "petitioners".

treated differently from retirement benefits. The Social Security program encompasses disability benefits as well and those benefits are fully available for integration (and hence offset) in a pension plan. Since the Regulation is neither unreasonable nor inconsistent with the statute, the decisions of this Court make clear that it should be upheld. *Fulman* v. *United States*, 434 U.S. 528, 533-536 (1978), and cases cited therein.

Moreover, the Regulation also reflects the long-standing policy of the Commissioner—announced in three published rulings prior to the enactment of ERISA—to permit pension plans to integrate workers' compensation in retirement systems without jeopardizing the qualification of the plans for federal tax purposes. It was the common understanding upon which collective bargaining and pension funding proceeded that workers' compensation was an appropriate offset in a pension plan as an integrable component. To the extent the legislative history of ERISA is instructive it suggests that Congress was aware of the Service's policy and intended that it be applied with respect to benefits covered by ERISA. The Commissioner's Regulation was therefore a valid exercise of his authority to prescribe "all needful rules and regulations" (26 U.S.C. 7805(a)).

II.

The court of appeals also correctly held that the provision of the New Jersey Workers' Compensation Act, which concededly prohibits the offsets in question here, was preempted by Section 514(a) of ERISA (29 U.S.C. 1144(a)). Section 514(a) explicitly provides that ERISA supersedes all state laws which "relate to" pension plans covered by the Act. There can be no serious doubt that the New Jersey statute

relates to pension plans to the extent that it prescribes the manner in which the pension rights of employees may be fixed and computed. The legislative history of the preemption provision shows that Congress intended ERISA preemption to apply in its broadest sense to bar application of any state law which could affect the administration of plans covered by the federal statute. Hence, the New Jersey statute prohibiting workers' compensation offsets against pension benefits cannot stand.

ARGUMENT

I.

THE TREASURY REGULATIONS REASONABLY INTERPRET ERISA TO PROVIDE THAT A REDUCTION OF AN EMPLOYEE'S PENSION BENEFITS BY THE AMOUNT OF A WORKERS' COMPENSATION AWARD IS NOT A PROHIBITED FORFEITURE UNDER SECTION 203(a) OF THE ACT

The principal question presented in these cases is whether provisions in a pension plan requiring offsets against retirement benefits equal to workers' compensation awards payable under state law violate the restrictions against forfeiture under the Employee Retirement Income Security Act (ERISA). It is an issue on which the courts of appeals are divided. On the authority of a governing Treasury Regulation (Section 1.411(a)-4(a) (26 C.F.R.)), the decision below held that workers' compensation offset provisions do not violate the restrictions against forfeiture in Section 203(a) of ERISA, 29 U.S.C. 1053. Since the grant of certiorari and the noting of probable jurisdiction in the instant cases, however, a divided panel of the Sixth Circuit has ruled to the contrary

and concluded that such offsets are prohibited by ERISA. *Utility Workers Union* v. *Consumers Power Co.*, No. 78-1402 (Jan. 6, 1981). Moreover, the court below also ruled that the New Jersey statutory prohibition against such offsets was preempted by Section 514(a) of ERISA, 29 U.S.C. 1144, which directs that "the provisions of this subchapter * * * shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in * * * [this title]."

We submit that the decision below correctly held that offsets for workers' compensation awards are not prohibited forfeitures under ERISA and that ERISA preempts the New Jersey statutory rule to the contrary. As we shall point out in greater detail (*infra*, pages 16-18), the statute does not explicitly address the first question presented. But in the absence of any direct statutory guidance, we believe that the explicit Treasury Regulation approving such offsets is entitled to deference as a reasonable interpretation of the statute. The Regulation in question (Section 1.411(a)-4(a)) explicitly directs that "nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits."

Since workers' compensation benefits are clearly "benefits which are provided under * * * State law," the offsets at issue are proper if the Regulation is a valid interpretation of the statute. Such Regulations, as this Court has frequently observed, must be upheld unless unreasonable or in conflict with the statute. In our view, the Regulation meets this standard. Although the Regulation was issued in 1977,

it reflects the longstanding policy of the Treasury to permit integration of state benefits into pension plans and to qualify for federal tax purposes pension plans that provide for such integration. As a result of this policy enunciated in several published rulings, collective bargaining and funding proceeded on the assumption that integration of workmen's compensation into pension plans was permissible for federal tax qualification. And by promulgating an explicit Regulation approving the practice subsequent to the enactment of ERISA, the Treasury assured pension plan managers that such integration was not a prohibited forfeiture. In our view, this Regulation, upon which there has been substantial reliance, should govern the disposition of the question as the authoritative interpretation of the statute. We turn now to a detailed examination of the pertinent provisions of ERISA.

A. Section 203(a)(3) Of ERISA Does Not Bar Offsets For Workers' Compensation

1. As this Court observed in *Nachman Corp.* v. *Pension Benefit Guar. Corp.*, 446 U.S. 359, 361-362 (1980), the predicate for the enactment of ERISA was Congress' findings "that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; [and] that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits * * *" (29 U.S.C. 1001(a)). Hence, Title I of ERISA, which contains the provisions pertinent to these cases (29 U.S.C. 1001-1144), requires minimum participation, vesting and funding schedules, establishes standards of fiduciary conduct for plan administrators, and provides for civil and criminal enforcement of the Act.

The statute announces a fundamental principle of nonforfeiture of pension benefits. That general rule is set forth in Section 203(a) of ERISA, 29 U.S.C. 1053(a), which states that "[e]ach pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age * * *." There are, however, a number of exceptions to the rule against forfeitability. These exceptions, set forth in Section 203(a)(3), are nonpayment of benefits if the employee dies (Section 203(a)(3)(A)); suspension of benefits if the employee takes a job with an employer in the same industry (Section 203(a)(3)(B)); retroactivity of certain plan amendments (Section 203(a)(3)(C)); and withdrawals by certain employees of any amount attributable to the benefit derived from mandatory contributions made by such employees (Section 203(a)(3)(D)). Reinforcing this statutory structure, Section 3(19) of the Act (29 U.S.C. 1002(19)) provides that "a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 1053(a)(3) (Section 203(a)(3) [of ERISA]) of this title."

In urging that offsets for workers' compensation awards are prohibited forfeitures, petitioners pursue the following syllogism: all reductions in benefits are forfeitures; all forfeitures are prohibited by Section 1053(a), with the sole exceptions enumerated in Section 1053(a)(3). Since workers' compensation offsets are not included in the list of permissible forfeitures in Section 1053(a)(3), petitioners therefore conclude that such offsets are prohibited because they expand the class of permissible offsets beyond those specifically enumerated in Section 1053(a)(3).

But petitioners' syllogism ignores other parts of the statute that refute their basic assumption that the sole permissible reductions are set forth in Section 1053(a). Prior to the enactment of ERISA, Section 401(a)(5) of the Internal Revenue Code of 1954 had long provided that a pension plan would not be considered discriminatory (and thereby qualify for tax-exempt status) "merely because the contributions or benefits of or on behalf of the employees under the plan * * * differ because of retirement benefits created under State or Federal law * * *." Pursuant to this statute, the Internal Revenue Service had permitted qualified pension plans to offset pension benefits by the amount of Social Security benefits that a plan participant received. See Treas. Regs., Section 1.401-4(b) (26 C.F.R.). However, while allowing such offsets, the Internal Revenue Service would not permit an employer to increase the offset on account of an increase in the level of Social Security benefits occurring after an employee retired and began to receive his pension.

In enacting ERISA, Congress was aware of the Service's administrative practice and specifically approved such offsets for Social Security benefits as long as such offsets were fixed at the level of the Social Security benefits paid at the commencement of retirement. Thus, Section 401(a)(15) of the Internal Revenue Code of 1954, enacted as Section 102(e) of Title II of ERISA, provides that "a [pension] trust shall not constitute a qualified trust * * * unless under the plan of which such trust is a part * * * such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act * * *." Section 206, which is the comparable provision in title I of ERISA (29 U.S.C. 1056(b)) repeats the rule with respect to

increases in Social Security benefits and extends it to increases in benefits provided under the Railroad Retirement Act. See H.R. Rep. No. 93-807, 93d Cong., 2d Sess. 29 (1974).[6]

2. The undisputed fact that offsets for Social Security benefits are permissible under ERISA refutes one of the essential links in petitioners' chain of reasoning, *i.e.*, that the offsets are prohibited forfeitures unles they are enumerated in Section 203(a)(3). As the court of appeals correctly observed (J.A. 109a-110a), Congress' ratification of the Internal Revenue Service's longstanding practice of permitting the integration of Social Security benefits (but not post-retirement increases in Social Security) into a pension plan shows that it did not intend to bar offsets for similar benefits that would not work a net reduction in an employee's contemplated retirement income. Here, of course, the offset for workers' compensation does not occasion a net reduction in petitioners' pension rights; rather, it simply serves to fund their pensions in part from another source during the period in which their workers' compensation is paid. Thus, the offset in question does not work

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[6] In approving the integration of Social Security benefits in private pension plans subject to ERISA, Congress expressed concern that the imposition of unnecessary cost burdens upon such plans would discourage their creation. Thus, the House Ways and Means Committee reported that (H.R. Rep. No. 93-807, 93d Cong., 2d Sess. 29 (1974):

> [Y]our committee is very much aware that many present plans are fully or partially integrated [with the Social Security program] and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth [of] or perhaps even eliminated private retirement plans.

a "forfeiture" in the sense that such a term connotes a reduction in overall benefits received.

B. The Court Of Appeals Correctly Upheld The Treasury Regulation Permitting Offsets Of Workers' Compensation Awards As A Reasonable Interpretation Of The Statute That Reflects The Longstanding Practice Of Integrating Such Benefits In Retirement Systems

1. Given Congress' approval of the offset for Social Security as a traditional integrable component in retirement systems[7] and its silence with respect to workers' compensation, the Treasury Regulation permitting offsets for workers' compensation should be upheld as a reasonable interpretation of the statute that reflects a similar practice of integrating such benefits in retirement systems.

It is no answer for petitioners to contend (Alessi Br. 28-38, Buczynski Br. 34-35) that workers' compensation is not comparable to Social Security because the former is designed to compensate for employment-related injuries while Social Security is a pension designed to compensate for wages lost as a result of old age. As the court of appeals correctly pointed out, the argument "fails to recognize the breadth of the Social Security program. Social Security provides benefits for *disabilities*, see 42 U.S.C. § 423 (1976), as well as benefits for old age. Thus, the Social Security offset that Congress has approved includes, perforce, an offset against pension benefits

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[7] The permitted offset for Social Security refutes petitioners' contention (Buczynski Br. 8, 32-34; Alessi Br. 16-18) that their vested pension rights are a form of deferred compensation and that any offset denies them part of their earned wages. Under this theory, any offset (including the permitted offset for Social Security) would be improper.

for *disability* benefits. The Social Security offset, since it includes an offset of disability benefits, makes any purported distinction between the Social Security offset and the Workmen's Compensation offset meaningless" (emphasis in original) (J.A. 108a).[8] There is accordingly no principle that prohibits pension offsets for payments made for disability under federal or state law. Indeed, one could argue that workers' compensation—which limits awards to work-related injuries—is a more appropriate subject for offset against a pension for service in the workplace than Social Security disability, which covers disabilities from non-work-related injuries as well.[9]

At all events, the process of proceeding by inference or analogy from the Social Security offset to workers' compensation yields diminishing returns. The inferences and analogies serve at best to refute petitioners' argument that the offset for workers' compensation is contrary to the language of ERISA or incompatible with its underlying policies. But analogies by their very nature cannot affirmatively demonstrate the existence of the offset for workers'

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[8] The same point may be made with respect to Railroad Retirement Act benefits. As in the case of Social Security, Congress permitted offsets of Railroad Retirement Act benefits (see 29 U.S.C. 1056(b)), which include payments for disabilities as well as for old age. See 45 U.S.C. 231a(a)(1)(iv) and (v).

[9] Contrary to petitioners' argument (Alessi Br. 39), the fact that under 42 U.S.C. 424a, workers' compensation is offset against Social Security disability, but not against retirement benefits, does not support their challenge to the offsets at issue here. The existence of such a rule under the Social Security system has no bearing upon private pension systems covered by ERISA where Congress permitted plans the option whether or not to provide for offsets for workers' compensation.

compensation in the statute. Given the silence of the statute on this score, it is plain that Congress left the question as to the propriety of such offsets to administrative resolution. On this clean slate, we submit that the Treasury Regulation permitting offsets for "benefits which are provided under the Social Security Act or under any other Federal or State law" (26 C.F.R. 1.411(a)-4(a)) should be upheld as a reasonable interpretation of the statute.[10]

The Regulation in question—Section 1.411(a)-4(a)—was promulgated in 1977 under Section 411 of the Internal Revenue Code, which corresponds to Section 203 of ERISA, 29 U.S.C. 1053(a). The Regulation provides that "* * * nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits." Workers' compensation is clearly encompassed by the

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[10] Contrary to petitioners' argument (Alessi Br. 30-31, Buczynski Br. 27-28), the fact that Section 401(a)(5) speaks of "retirement benefits created under the Federal or State law" does not perforce cast doubt upon Section 1.411(a)-4(a) which encompasses "benefits which are [payable] provided under Federal or State law." It is Section 411 (corresponding to Section 203 of ERISA) which is the statute under which the Regulation was promulgated and, as we have shown, nothing in ERISA prohibits the offset of non-retirement-type benefits such as Social Security and Railroad Retirement Act disability payments. In the absence of a statutory prohibition, the Commissioner was therefore able to provide that workers' compensation is a permissible offset. At all events, Congress' explicit approval of the application of the antidiscrimination rules to benefit accruals under ERISA necessarily includes approval of the Commissioner's thrice-published position permitting the integration of workers' compensation in a qualified pension plan (see pages 20-22, *infra*).

terms of the Regulation as a benefit "provided under any other * * * State law and which [is] taken into account in determining plan benefits." [11] We have shown (*supra*, pages 13-16), that Section 203 does not bar such an offset. There is no requirement, as petitioners would have it (Buczynski Br. 24), that would make the validity of the Regulation depend upon specific statutory authorization. It is sufficient that the Regulation is not inconsistent with the statute. "This Court has many times declared that Treasury regulations must be sustained unless unreasonable and plainly inconsistent with the revenue statutes and that they constitute contemporaneous construction by those charged with administration of these statutes which should not be overruled except for weighty reasons." *Commissioner* v. *South Texas Co.*, 333 U.S. 496, 501 (1948). Accord: *United States* v. *Correll*, 389 U.S. 299, 306-307 (1967); *Bingler* v. *Johnson*, 394 U.S. 741, 747-751 (1969); *Fulman* v. *United States*, 434 U.S. 528, 533-536 (1978).[12]

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[11] The core of the Sixth Circuit's contrary holding in *Utility Workers Union* v. *Consumers Power Co.*, *supra*, was its conclusion that the Regulation did not encompass workers' compensation offsets. But there can be no doubt that workers' compensation is a benefit provided under state law. Contrary to the court's apparent belief, the fact that the Regulation did not specifically refer to worker's compensation does not foreclose its application to such benefits by the published rulings, which both antedated and postdated the Regulation.

[12] Although the court of appeals characterized the Regulation as legislative (J.A. 99a-101a), it is in our view interpretative for it explains and construes statutory language (26 U.S.C. 401(a), 411) rather than promulgates rules pursuant to a general congressional authorization containing no guidelines. See, as specimens of the latter type, Sections 385(a) and 1502 of the Internal Revenue Code respectively au-

Given the silence of the statute, the Commissioner might well have reached the opposite conclusion. But that fact, even if coupled with judicial preference for another rule, cannot serve to set aside a Regulation issued by the Commissioner pursuant to his authority to prescribe "all needful rules and regulations for the enforcement" of the Internal Revenue Code. 26 U.S.C. 7805(a). As this Court pointed out in *National Muffler Dealers Ass'n* v. *United States*, 440 U.S. 472, 488 (1979), "The choice among reasonable interpretations is for the Commissioner, not the courts."

2. a. In light of the foregoing, we submit that the judgment of the court of appeals can be affirmed on the ground that the governing Treasury Regulation is a valid exercise of the Commissioner's authority and that it is not unreasonable or inconsistent with the statute. But the Regulation also reflects the longstanding policy of the Commissioner to permit pension plans to integrate workers' compensation in retirement systems without jeopardizing the qualification of the plans for federal tax purposes. This policy antedated the enactment of ERISA. Moreover, the promulgation of the Regulation in 1977 under Section 411 of the Internal Revenue Code (corresponding to Section 203 of ERISA) shows that the propriety of the practice survived the applicability of the ERISA rules.

In the course of administering Section 401(a)(4) and (5) of the Internal Revenue Code dealing with

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thorizing the promulgation of Regulations to determine whether an interest in a corporation is stock or debt, and for the filing of consolidated returns of corporations. But even as an interpretative Regulation, Section 1.411(a)-4(a) meets the standard for validity established by the decisions of this Court cited above.

the requirement that a qualified pension plan not discriminate in favor of highly-paid employees, the Internal Revenue Service ruled that "benefits payable under a workmen's compensation law or occupational diseases law * * * are acceptable as an offset against benefits payable under [a] qualified pension plan * * *." Rev. Rul. 68-243, 1968-1 Cum. Bull. 157, 158. The substance of this ruling was republished in Rev. Rul. 69-421, part 4(j)(4), 1969-2 Cum. Bull. 61, 72, in IRS Pub. No. 778 (2-72), *Guides for Qualification of Pension, Profit-Sharing, and Stock Bonus Plans* 15 (1972), and in Rev. Rul. 78-178, 1978-1 Cum. Bull. 117. Prior to the commencement of the litigation in these cases, it was the common understanding of both pension managers and representatives of organized labor that workers' compensation was an appropriate offset in a pension plan and that integration of such benefits would not violate the antidiscrimination rules of Section 401(a)(5).

As the court of appeals pointed out (J.A. 112a), to the extent the legislative history of ERISA is instructive, it suggests that Congress was aware of the Service's policy and approved it. Thus, the Conference Committee stated that it "intend[ed] that the antidiscrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. Also, the antidiscrimination rules may be applied with respect to benefit accruals." H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 277 (1974). Given Congress' explicit approval of the Service's rules with respect to antidiscrimination and its intent to apply them to benefit accruals under ERISA, the Commissioner's

Regulation extending his workers' compensation offset policy to the ERISA context was a valid exercise of his rulemaking authority.[13]

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[13] Contrary to petitioners' argument (Buczynski, Br. 30-33), the fact that the Commissioner does not permit benefits under a plan to be offset by disability damages recovered by an employee in a common law action against the employer does not cast doubt upon the validity of his policy permitting offsets for workers' compensation. See Rev. Rul. 68-243, *supra*. While workers' compensation may be viewed as a comprehensive replacement for the traditional tort remedies and their attendant common law defenses, the theories underlying the two legal systems are markedly different. For example, tort liability rests upon a finding of fault by the employer while under worker's compensation, the fault of both the employer and employee are irrelevant. All that is required is that the injury be work related. 1A *Larson, Workmen's Compensation Law* §§ 20.00, 30.10 (1979 ed.). Unlike tort liability, worker's compensation is an overall system of wage-loss protection the primary ingredient of which is not medical impairment but loss of earning capacity. See also, 2 & 4 *Larson, supra*, §§ 57.10, 97.10.

In light of these differences, the Commissioner could reasonably distinguish between a tort judgment and a workers' compensation award. Indeed, if a tort judgment (with its presumption of fault) could be offset against a pension benefit, the employer could use pension assets to satisfy a liability borne out of his own misconduct. Workers' compensation, however, suffers from no such impediment. Moreover, the wage-loss protection theory of workers' compensation makes it a traditional integrable component in a retirement system. Finally, to the extent that a workers' compensation award reimburses the worker for medical expenses or provides fixed payments for bodily impairment, the Commissioner does not permit such awards to be used to offset pension benefits because such awards may not be provided under a qualified pension plan. Rev. Rul. 78-178, *supra*, 1978-1 Cum. Bull. at 118. Indeed, the General Motors offset clause likewise provides that no deduction shall be made for such medical payments (see page 3, note 3, *supra*). Thus, contrary to the

II.

SECTION 514(a) OF ERISA PREEMPTS NEW JERSEY LAW INSOFAR AS ITS APPLICATION WOULD PROHIBIT OFFSETS OF WORKERS' COMPENSATION AWARDS AGAINST PENSION BENEFITS

If the Court agrees with our submission in point I, *supra*, that Section 1.414(a)-4(a) of the Treasury Regulations properly construes ERISA as not barring offsets for workers' compensation, it is necessary to address petitioners' alternative contention that such offsets are prohibited by New Jersey law. The particular provision upon which they rely is Section 34:15-29 of the New Jersey Workers' Compensation Act, N.J. Stat. Ann. (West. Supp. 1979) which states:

> The right of compensation granted by this chapter [the workmen's compensation act] may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments.

The New Jersey statute, if applicable, would prohibit the offset clauses at issue in these cases. But we submit that the court of appeals correctly held that Section 514(a) of ERISA preempts the state statute and bars its application. Section 514(a) of ERISA, 29 U.S.C. 1144(a), provides:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now

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Sixth Circuit's view in *Utility Workers Union* v. *Consumers Power Co.*, *supra* (slip op. 19), in no sense does the Commissioner's offset policy put an injured employee in a worse position than a healthy employee with comparable years of service under the pension plan.

> or hereafter relate to any employee benefit plan described in * * * [this title].

The court of appeals (J.A. 113a-117a) correctly held that Section 514 preempted the New Jersey statute. Sensitive to the voluntary aspects of the private benefit plan system, Congress determined to lessen the disruptive effect of the new federal law by saving plans from possibly inconsistent or duplicative state laws. The legislative history of Section 514 describes this purpose with clarity. Indeed, the present version of Section 514 shows that Congress consciously rejected proposals for preemption provisions of narrower scope. While the earlier proposals had limited federal preemption to subjects covered by the Act, the Conference Committee enlarged the provision to preempt all state laws that "relate to" plans subject to ERISA. As Senator Javits, a sponsor of ERISA, explained:

> Both the House and Senate bills provided for the preemption of State law, but * * * defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation * * *. [O]n balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefits programs.[14]

The managers of the bill reaffirmed the intent of Congress in unmistakably explicit terms. For ex-

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[14] 120 Cong. Rec. 29942 (1974).

ample, Representative Dent, Chairman of the Subcommittee on Labor of the House Education and Labor Committee, declared:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. * * *. The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof * * * which would affect any employee benefit plan [subject to ERISA].[15]

And Senator Williams added:

> It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State or local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which may have the force or effect of law.[16]

In view of this unequivocal expression of legislative intent, it is not surprising that the federal courts

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[15] 120 Cong. Rec. 29197 (1974).

[16] 120 Cong. Rec. 29933 (1974).

that have considered the scope of Section 514 have held, almost uniformly and in a variety of contexts in which these questions have been presented, that ERISA preemption should—in the words of Senator Williams—"apply in its broadest sense" to all state laws. For example, in *Azzaro* v. *Harnett*, 414 F. Supp. 473, 474 (S.D.N.Y. 1976), aff'd, 553 F.2d 93 (2d Cir.), cert. denied, 434 U.S. 824 (1977), the court held that a state was without jurisdiction even to inquire as to the status of a plan participant. As the court reasoned (414 F. Supp. at 474): "The legislative history of ERISA shows that Congress intended absolute preemption of the field of employee benefit plans." Accord: *Hewlett-Packard Co.* v. *Barnes*, 425 F. Supp. 1294 (N.D. Cal. 1977), aff'd per curiam, 571 F.2d 502 (9th Cir.), cert. denied, 439 U.S. 831 (1978) (states may not regulate employee benefit plans as "health care service plans" providing prepared medical services); *National Carriers' Conf. Committee* v. *Heffernan*, 454 F. Supp. 914, 915-917 (D. Conn. 1978) (states may not tax an employee benefit plan covered by ERISA). See also *Wadsworth* v. *Whaland*, 562 F.2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980-981 (1978), (employee welfare plan may not be treated as an "insurance company" under state insurance laws).

There is accordingly no basis for petitioners' argument (Buczynski Br. 46) that ERISA preempts only statutes concerning pension plans and that the New Jersey statute addresses workers' compensation. The New Jersey statute seeks to accomplish two objectives. First, it accords injured employees a right to compensation. Second, it directs that pension benefits available to the employee "shall not be set off against employees' retirement pension benefits or payments." Surely this latter aspect of the New

Jersey statute "relate[s] to any employee benefit plan" within the plain meaning of Section 514(a) of ERISA. By its statute, New Jersey seeks to control the administration of pension plans under the jurisdiction of ERISA. But in enacting Section 514(a), Congress sought to eliminate the application of such conflicting state law and "occupy the entire field of employee benefit regulation." *Hewlett-Packard Co.* v. *Barnes*, *supra*, 425 F. Supp. at 1299. Hence, the New Jersey statute prohibiting workers' compensation offsets against pension benefits cannot stand.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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193